

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM SZYMCAK, STEFAN SCHUELE,
KIM DREHER, MARIO LOPEZ, MELANIE
RIVERA, KATRINA BOYD,
ANGELA GREATHOUSE,
CORNELIUS JACKSON, DAVID
SIMONS, LOLITA DILLARD, and
ANNE STEWART, individually and
on behalf of others similarly situated,

Plaintiffs,

-against-

NISSAN NORTH AMERICA, INC.,
and NISSAN MOTOR CO., LTD.,

Defendants.

Civil Action Number:
10-CV-07493(VB)

**AFFIRMATION OF
E. PAUL CAULEY, JR.,
ESQ. IN SUPPORT OF
DEFENDANTS'
MOTION TO STAY**

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E. PAUL CAULEY, JR., an attorney duly admitted, *pro hac vice*, to practice law before the United States District Court for the Southern District of New York, hereby affirms the following to be true or, if stated upon information and belief, believes it to be true, under penalty of perjury:

1. I am a partner in the law firm of SEDGWICK LLP, attorneys for defendants, NISSAN NORTH AMERICA, INC. ("NNA") and NISSAN MOTOR CO., LTD. ("NML") (collectively referred to as "Defendants"), as such, I am familiar with the facts, pleadings and prior proceedings of this action by virtue of my review of the file maintained in this office for the defense of this action.

2. This Affirmation and the accompanying Memorandum of Law are respectfully submitted in support of Defendants' Motion to Stay the instant proceedings while the United

States Judicial Panel on Multidistrict Litigation (“the JPML”) considers a motion to transfer and consolidate this case and two other virtually identical putative class actions pending in federal district courts around the country.

PRÉCIS OF THE ARGUMENT

3. This action is one of three similar putative class actions that have been filed in federal district courts located in New York, Texas, and California alleging that NNA’s¹ marketing and advertising fraudulently misrepresented the quality of its 2005 – 2010 model year Nissan Pathfinder, Nissan Xterra, Nissan Frontier, and Infiniti FX vehicles, which allegedly contain a defective radiator about which NNA allegedly was aware.

4. Today, NNA served a motion for transfer and consolidation of the related actions pursuant to 28 U.S.C. § 1407 (“the MDL Motion”) with the JPML requesting the cases be transferred and consolidated into a single Court for pre-trial matters. The MDL Motion is based on the similarity of claims asserted by the plaintiffs in the three actions.

5. In the interim, however, a stay of this proceeding is necessary in order to save judicial resources and avoid unnecessary and duplicative litigation. Without a stay, the parties and the respective courts are likely to engage in duplicative proceedings prior to the MDL determination. This Court has the power to stay the action, particularly at its early stages, and this brief stay will not prejudice Plaintiffs. *See Medical Society of the State of New York v. Connecticut General Corp.*, 187 F. Supp. 2d 89, 91 (S.D.N.Y. 2001) (staying remand motions and holding transfer motions in abeyance until the JPML ruled on transfer requests). Therefore,

¹ In addition to NNA, NML has also been named as a defendant in one of the other two similar actions.

Defendants respectfully pray that the Court stay this matter pending resolution by the JPML of NNA's motion pursuant to 28 U.S.C. § 1407.

6. In good faith, NML intends to timely respond to written jurisdictional discovery served by Plaintiffs, which is currently due Friday, March 2, 2012. However, given the recent developments set forth above, NML respectfully requests the Court, subject to and without waiving its objection to jurisdiction, to stay any further proceedings on the jurisdictional issue. Additionally, NNA respectfully requests that its deadline to file a responsive pleading to Plaintiffs' Second Amended Complaint, currently set for Friday, March 2, 2012, be stayed until the JPML determines whether to consolidate and transfer the three similar cases.

Dated: Dallas, Texas
February 28, 2012

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'E. Paul Cauley, Jr.', with a stylized flourish at the end.

E. Paul Cauley, Jr. (admitted *pro hac vice*)
TX Bar No. 04018900